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Various Grievance Procedures Affecting Federal Employees Employed Outside the Continental United States

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VARIOUS GRIEVANCE PROCEDURES AFFECTING FEDERAL
EMPLOYEES EMPLOYED OUTSIDE THE CONTINENTAL
UNITED STATES

by

John William Clancy

A Thesis Submitted to the Faculty of the Institute of Social
and Industrial Relations of Loyola University in Partial
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Master of Social and Industrial Relations

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LIFE

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CHAPTER I

THE BACKGROUND OF VARIOUS GRIEVANCE PROCEDURES AFFECTING FEDERAL EMPLOYEES EMPLOYED OVERSEAS

A "grievance", for the purpose of this report, is defined as an employee's expressed feeling of dissatisfaction with aspects of his working conditions and relationships which are outside his control. A "grievance procedure", as the term is used herein, is a method used in determining the specific cause of a grievance in an effort to find the best way to remove the grievance. These definitions are given in the Federal Personnel Manual published for the guidance of Federal personnel officials;¹ the definitions given in the grievance procedures of the Federal agencies discussed herein are based on those given in the Federal Personnel Manual, and are substantially the same in each agency. An "appeal", as the term is used herein, refers to a grievance carried beyond the lowest supervisory level by the aggrieved.

1 The definitions may be found in Chapter E-2, "Employee Relations-Grievance Procedures," Federal Personnel Manual, U. S. Government Printing Office, Washington, D. C., n. d., 1.

"Federal employees" are those United States citizens who are civilian employees of the following nine Federal agencies, and who are employed in the territories and possessions of the United States and in other foreign areas: The Departments of the Air Force, Army, Navy, and Interior, the Departments of Agriculture, Commerce, and State, the Panama Canal and Panama Railroad Company,² and the Economic Cooperation Administration.

While the annual report of the Civil Service Commission for fiscal year 1950 discloses that thirty-four Federal agencies had one or more employees stationed outside the United States,³ a study of the grievance procedures of all thirty-four agencies is not warranted. In the first place, the operation of a formal grievance procedure requires, by its very nature, the presence of a relatively large group of employees in one locality. Secondly, such grievances as do arise in small groups lend themselves to informal adjustment on an individual basis,⁴ as may be

2 The Panama Canal and Panama Railroad Company are shown as two distinct agencies in the 67th Annual Report of the U. S. Civil Service Commission for fiscal year ending June 30, 1950. However both agencies use a common personnel manual and grievance procedures, hence are treated herein as one agency; reference may be made to Employment Information and Personnel Policies, The Panama Canal, Washington, D. C., 1950.

3 U. S. Civil Service Commission, 67th Annual Report, Government Printing Office, Washington, D. C., 1951, 64-65.

4 Civil Service Assembly of the United States and Canada, Employee Relations in the Public Service, Chicago, 1942, 210.

expected. Consequently, only the grievance procedures of those agencies having more than two thousand employees outside the United States are studied herein. While the number of two thousand is an arbitrary one, an indication of its suitability is found in the case of the Economic Cooperation Administration. This agency has 3,487 employees outside the United States;⁵ however a letter from its Director of Personnel advises that "due to the smallness of the mission with many averaging 30 Americans per country, a very informal working atmosphere is possible."⁶

Having defined the terms and delineated the field of study, the background of grievance procedures affecting Federal employees outside the United States can now be given.

Grievance procedures originate in, and constitute a major part of, the broad field of employee relations.⁷ This latter field, from the point of view of the personnel administrator, is an aspect of personnel management which takes account of em-

5 U. S. Civil Service Commission, 67th Annual Report, 64.

6 Letter from R. L. Rupard, Director of Personnel, Economic Cooperation Administration, November 1, 1951. The functions of the Economic Cooperation Administration have since been absorbed by the newly created Mutual Security Agency, per letter from Fred Zappolo, Personnel Division, Mutual Security Agency, Washington 25, D. C., January 4, 1952; see also U. S. Code Annotated, Title 22, Sections 1651-1712.

7 Frederick M. Davenport, "Why Personnel Offices Need More Funds," Personnel Administration, Washington, D. C., September, 1939, 7.

employees' reactions to their work situations.⁸ Management, whether public or private, rightly devotes attention to employee relations because the quality of those relations determines the effectiveness of a staff beyond the minimum of mere exertion.⁹

More specifically, employee relations and personnel management are concerned with such matters as recruitment, examination, position-classification, pay policy, assignment of duties, supervision, training, promotion, discipline, accident compensation, retirement, employee organization, morale, and safety.¹⁰ Since all such personnel matters are related to working conditions and relationships, grievances may arise therein. Consider, for example, some of the common complaints adjusted in accordance with grievance procedures in the Tennessee Valley Authority: complaints arising in connection with compensation, discrimination and favoritism, promotions, transfers, inadequate reasons for removals and demotions, ratings, disciplinary measures, incompetent or disagreeable supervisors, unsafe working conditions, irregular hours, and supervisors failing to criticize

8 Civil Service Assembly of the United States and Canada, Employee Relations, 207.

9 Ibid., 5.

10 Leonard D. White, Introduction to the Study of Public Administration, 3rd ed., New York, 1950, 313. The first edition of this work appeared in 1926, evidence of Mr. White's long association with the field of public administration.

work prior to termination for unsatisfactory performance.¹¹

The foregoing consideration of the field of employee relations, and the issues to be found therein, suggests some preliminary ideas concerning the nature of grievance procedures as such. In the first place, any procedure striking so closely to the lives of employees, and which is related so closely to the morale and efficiency of a staff, is apt to receive considerable criticism. This fact follows quite naturally from the two major considerations inherent in a grievance procedure: (1) the desire to give the administrative official enough latitude to enable him to build a good working force, and (2) the desire to protect the employee from unwarranted injury and to give him confidence that his agency is a good place to work.¹² The specific procedures that are developed in view of these two considerations consequently reflect compromise; because there is compromise there is the probability of criticism. It was probably recognition of this fact which impelled an Employee Relations Committee of the Federal Personnel Council to state that by defini-

11 Gordon R. Clapp, Director of Personnel for the TVA, "A New Emphasis in Personnel Administration," The Annals of the American Academy of Political and Social Science, Philadelphia, Vol. 189, January, 1937, 116.

12 Charles S. Hyneman, Bureaucracy in a Democracy, New York, 1950, 407. Hyneman relates the two considerations to removal, demotion, and discipline, but the considerations are both so distinct and broad that they may be related to other personnel matters involving grievance procedures.

tion a sound grievance procedure is time-consuming and awkward, that "All in all a democratic grievance and appeals system is not trouble-free at best."¹³

Continuing this preliminary inquiry into the nature of grievance procedures, it can be seen in the second place and from the foregoing, that grievance procedures must stress the need for adjustment at the lowest possible organizational level. This is one of the two basic assumptions underlying the adoption of grievance handling in both government and industry; the other assumption is that prompt and equitable adjustment is necessary for the most effective accomplishment of the work of any organization.¹⁴ Formal grievance procedures must, therefore, be viewed as an alternative to be used after attempts at informal adjustment, usually by the immediate supervisor concerned, have failed.¹⁵

With these preliminary ideas concerning the nature of grievance procedures in mind, it is possible to begin a more specific examination of the various grievance procedures affect-

13 Federal Personnel Council, U. S. Civil Service Commission, Grievances and Appeals, 1,7; mimeographed material prepared from Council discussion of Employee Relations Committee's Report, March 1, 8, and 15, 1951. This mimeographed material includes the "Draft Report of Sub-Committee on Grievances and Appeals" (pages 1-26), and letter of transmittal submitted to the Employee Relations Committee by the Sub-Committee. The Federal Personnel Council is located at 1626 K Street, Washington, D. C.

14 Ibid., 11.

15 Ibid., 14.

ing Federal employees stationed outside the United States. This can best be undertaken by posing two questions: (1) Is there a need for a study of these procedures? and (2) What is the status of grievance procedures affecting these employees?

The first question may well be asked in view of the fact that the grievance procedures affecting Federal employees in the United States are one and the same as those which affect Federal employees outside the United States.¹⁶ In view of this fact, are there reasons why the grievance procedures affecting the latter should be singled out for special study? An affirmative answer, in which the reasons therefor fall into two categories, can be given: the answer is found in two considerations, the first a quantitative one, the second qualitative.

With respect to the quantitative consideration, a study of grievance procedures affecting Federal employees overseas is justified from a numerical point of view. Federal funds being spent outside the United States have grown considerably, in keeping with the nation's foreign policy. The post-war foreign-aid programs of the Government involved expenditures during the fis-

16 This knowledge was obtained through correspondence with the Directors of Personnel of the nine agencies whose grievance procedures have been included herein; no references to the fact that the same procedures govern both classes of employees were encountered in the material included in the bibliography herein.

cal years 1946-1951 of approximately thirty-billion dollars;¹⁷ moreover about seven billion dollars were budgeted for foreign aid for fiscal year 1952, and nearly eleven billion have been budgeted for foreign aid programs in fiscal year 1953.¹⁸ A relatively new program, Point Four, which has been in operation only a year and a half, now numbers 216 projects in thirty-four countries.¹⁹ Among the agencies having the most extensive responsibilities under such a program we find the Departments of State, Agriculture, Commerce, Interior, and Army, all of whose grievance procedures are studied herein.²⁰ The Commission on Organization of the Executive Branch of the Government, better known as the Hoover Commission, has pointed out that at least forty-five executive agencies, in addition to the Department of State, were involved in the administration of foreign affairs.²¹

17 Compiled from report prepared by The Brookings Institution for the Bureau of the Budget, Executive Office of the President, The Administration of Foreign Affairs and Overseas Operations, Government Printing Office, Washington, D. C., 1951; see table, page 30.

18 America, national Catholic weekly, Norwalk, Conn., Vol. 86, No. 18, February 2, 1952, 461.

19 Ibid., No. 19, February 9, 1952, 495.

20 U. S. Department of State, Point Four, publication 3719, revised January, 1950, Government Printing Office, Washington, D. C., 1950, 41-42.

21 The Brookings Institution, The Administration of Foreign Affairs, 1.

The fact that programs were established, funds budgeted, and agencies assigned responsibilities for the execution of the programs, suggests that the number of Federal employees engaged in the administration of programs outside the United States has grown. In the fiscal year ended June 30, 1940, there were about 45,000 Federal employees employed outside the United States.²² Ten years later this number had grown to about 145,000,²³ and by June, 1951, there were about 165,000 Federal employees employed outside the United States solely by the nine agencies included in this report.²⁴

The mere fact, however, that there has been an increase in the number and size of programs overseas, and an increase in the number of employees administering those programs, does not in itself point out a need for a study of this nature. If the procedures in effect prior to the increase met the needs imposed by the increase, and were without criticism, there would be no need for such a study. Such, however, is not the case, as the qualitative consideration well shows.

22 U. S. Civil Service Commission, 57th Annual Report, Government Printing Office, Washington, D. C., 1941, 139.

23 Ibid., 67th Annual Report, 1951, 72.

24 From a report by Senator Byrd, Chairman of the Joint Committee on Reduction of Nonessential Federal Expenditures, as quoted in U. S. Congress, Congressional Record, 82nd Cong., 1st Sess., August 9, 1951, Vol. 97, No. 146, 9884-9885.

Current criticisms of the quality of employee relations and grievance procedures in the Federal government comprise the qualitative consideration testifying to the need of a study of this nature. Criticisms pertinent to this report can be grouped under three headings: those of a general nature, those relating to employee relations and personnel management, and those relating specifically to grievance procedures now in effect.

With respect to those criticisms of a general nature, it is necessary to point out, first of all, that the problem of effective employee relations in the Federal service is linked to the larger problem of reorganization of Government. Criticism of the "administrative branch" of the Government has been voiced for years, and is reflected in the history of the Administrative Procedures Act of 1946.²⁵ This Act took into account, in its reorganization efforts, such studies as went into the 1937 Report of the President's Committee on Administrative Management, and the 1941 Report of the Attorney-General's Committee on Administrative Procedure.²⁶ The Administrative Procedures Act, however, was concerned with the broader questions of reorganization; while it might well have been more specific with reference to such

²⁵ U. S. C., Ch. 324 - P. L. 404; see also U. S. Code Annotated, Title 5, sections 1001-1011.

²⁶ House Report No. 1980, May 3, 1946, by the House Committee on the Judiciary on the Administrative Procedure Act; see U. S. C., 1946, 1195-1206.

questions as grievance procedures in Federal agencies, it left such matters to the discretion of the agencies. Since the Act was passed in 1946, other demands for reorganization have been voiced by various civic and professional groups, the best known of which is the Hoover Commission referred to previously.²⁷

Criticisms of the quality of employee relations and personnel management in the Federal service have come from many quarters: Mr. William C. Doherty, president of the largest group of organized Federal employees, the National Association of Letter Carriers, has charged that Government has failed to adopt personnel policies long ago adopted by progressive private management.²⁸ Representative Rees, of Kansas, mentions many complaints received by him concerning the lack of a uniform personnel policy.²⁹ The Hoover Commission states that the turnover of Federal personnel is a major obstacle to stabilizing the career

27 See, for example, Personnel Management, a report to the Congress by the Commission on Organization of the Executive Branch of the Government, February, 1949, Government Printing Office, Washington, D. C.

28 U. S. Congress, Congressional Record, 82nd Cong., 1st Sess., August, 1951, Vol. 97, No. 150, Washington, D. C., A5385.

29 Ibid., No. 200, November 9, 1951, A7178. Repr. Rees believes more uniformity could be achieved if the Civil Service Commission required departments and agencies to adhere to a consistent, basic personnel policy "which recognizes the Government as a single employer."

service;³⁰ moreover that 500,000 persons are recruited a year to fill vacancies caused by turnover, an indication of low morale.³¹ Similarly, Mr. Robert Ramspeck, Chairman of the Civil Service Commission, in an address to the Civil Service Assembly of the United States and Canada, pointed out that, in the midst of the heavy recruitment program being conducted, the turnover rate among Federal employees is nearly thirty-six per cent per year; "So far removed from Utopia did Federal employees consider their employment that 321,291 of them quit their jobs in the year ending last June 30."³²

Many criticisms of personnel administration overseas have been made by the International Studies Group of the Brookings Institution. An earlier study by the Hoover Commission discloses why such criticisms were likely to occur: the Commission pointed out that "Most of the problems relating to occupation, military government, and assistance to other nations arose so rapidly that time did not permit adequate planning in terms of

30 Personnel Policy Committee of the Commission on Organization of the Executive Branch of the Government, Programs for Strengthening Federal Personnel Management, Government Printing Office, Washington, D. C., 1949, 3-9.

31 Commission on Organization of the Executive Branch of the Government, Personnel Management, 5.

32 U. S. Congress, Congressional Record, 82nd Cong., 1st Sess., October 16, 1951, Vol. 97, No. 194, Washington, D. C., A6743.

our total responsibilities abroad."³³ The Brookings Institution, through its International Studies Group, discusses in detail the problems and needs of personnel administration overseas. The central problem derives from the assumption that the United States will continue to maintain large civilian staffs engaged in the execution of urgent and complex programs overseas. The problem itself, in the opinion of the Institution, is to determine the kind of personnel administration needed to recruit and retain overseas civilian staffs.³⁴ The problem is as present complicated by the existence of a half-dozen personnel systems made up of mixtures of traditional personnel policies and extemporaneous measures.³⁵ Concerning this patchwork, the Institution has stated that "There is on all sides an impressive unanimity of judgment that the present medley of personnel systems constitutes an important drag on the effective conduct of foreign affairs programs."³⁶ The personnel needs of overseas programs, reports the Institution, have greatly outrun the personnel machinery devised

33 A report to the Congress by the Commission on Organization of the Executive Branch of the Government, Administration of Overseas Affairs, Government Printing Office, Washington, D. C., 1949, 3.

34 The Brookings Institution, The Administration, 292-293.

35 Ibid., 292-296.

36 Ibid., 301.

to operate under simpler conditions.³⁷

Since the grievance procedures affecting Federal employees overseas are identical to those affecting "domestic" employees, the third group of criticisms, those relating directly to grievance procedures, can now be mentioned. Speaking in 1939, the Chairman of the Federal Council of Personnel Administration (later called the Federal Personnel Council) remarked that there was a great difference in agency policies concerning employee relations and grievances, a difference "amounting to a chaos of plans."³⁸ The Civil Service Assembly of the United States and Canada noted, in 1942, a growing demand from Federal employee organizations for the institution of permanent procedures to expedite the adjustment of individual grievances.³⁹ A more recent study of the criticisms of grievance procedures disclosed, in 1951, that about half of the criticisms came from management and half from employees; further, complaints about agency grievance procedures charged that procedures were "complicated and time-consuming; also 'technical' and 'legalistic'," and that employees and supervisors got lost "in the maze of channels and procedures."⁴⁰ The Sub-Committee on Grievances and Appeals in the Fed-

37 Ibid., 292.

38 Davenport, "Why Personnel Offices Need More Funds," Personnel Administration, September, 1939, 7-8.

39 Civil Service Assembly, Employee Relations, 123.

40 Federal Personnel Council, Grievances and Appeals, 4.

eral Personnel Council indicated the extent of dissatisfaction with existing procedures in stating:

Grievance and appeal procedures in the Federal service have in recent years been under heavy criticism from employees, supervisors and top management officials of many agencies, as well as from employee and veterans' organizations and individual Members and committees of Congress.⁴¹

In view of the number and nature of the foregoing criticisms, an affirmative answer can be given the first question posed previously: Is there a need for a study of grievance procedures affecting Federal employees overseas? The answer has its source in the demands that have been voiced for broad-scale reorganization of the Government, in criticisms of employee relations and personnel administration overseas, and in criticisms of existing grievance procedures. Still another source of affirmation is found in the features peculiar to overseas employment: the relatively greater complexity and cost of the programs being administered, the importance of the work, the effect of U. S. citizen-employees' and their attitudes upon foreign citizenry, and the diversity of working conditions to be encountered abroad. Consider, for example, the reasons given by the employees of one agency for going overseas: cultural, financial, and patriotic motives were listed. Their reasons for leaving their overseas employment included: dissatisfaction with rising living-costs,

⁴¹ Ibid., 1.

"here-sickness", as opposed to "home-sickness", attributable to the poor condition of the country, outcries against "over-organization", resentment over the need for formal permission to be married, to secure travel orders, entry permits, and special passes, the difficulty of finding homes, and dissatisfactions concerning menus.⁴²

The second question, posed to bring out some of the details of grievance procedures, was asked as follows: What is the status of grievance procedures affecting Federal employees outside the United States? Since the procedures are identical to those affecting Federal employees in the United States, an answer can be found in the executive and legislative actions relating to the latter. The Hoover Commission has pointed out that the status of personnel management can be found in such actions;⁴³ the status of grievance procedures, an integral part of personnel management, can also be found therein.

However, before beginning an examination of the major executive and legislative actions which most clearly establish the status of grievance procedures, it would be well to bear in

42 Paul G. Lutzeier, "OMGUS Personnel--A Retrospective View," Personnel Administration, Washington, D. C., Vol. 11, No. 5, May, 1949, 28-29. Mr. Lutzeier was Chief of the Employee Utilization Section, Office of Personnel; the agency referred to is the Office of Military Government United States; the place, Germany.

43 Commission on Organization of the Executive Branch of the Government, Programs for Strengthening, 1.

mind a dictum of the Hoover Commission which holds that:

Recognition of the limitations and obligations imposed by the Government as an employer is requisite to a realistic appraisal of Federal personnel management, since they establish boundaries within which any improvements must be accomplished.⁴⁴

Similar recognition must be made with respect to grievance procedures, since they are a part of personnel management. The boundaries within which grievance procedures have their being, and within which improvements must be accomplished, originate in the limitations and obligations imposed by Government as an employer. Grievance procedures in Federal service, consequently, cannot be identical to those found in private industry owing to differences in the natures of the employers.⁴⁵ While there can be, and is, agreement as to the basic assumptions underlying grievance procedures,⁴⁶ the details of their procedures must differ. Some of the limitations and obligations peculiar to the Government as an employer have been pointed out by the Hoover Commission as follows: The Government must impose upon

44 Ibid., 2-3.

45 Various ideas that have prevailed concerning the nature of the Government as employer may be found in Sterling D. Spero's The Labor Movement in a Government Industry, New York, 1924, Government as Employer, New York, 1948, and his monograph in Carl Joachim Friedrich, et al., Problems of the American Public Service, New York, 1935, 171-174.

46 Federal Personnel Council, Grievances and Appeals, 11. In the opinion of the Sub-Committee there is little dissent from the basic assumptions underlying the adoption of grievance procedures in Government and industry; the basic assumptions are given on page 6 herein.

itself many regulations to fend off pressures from those who seek special privilege or gain; it must prevent the employment of those whose loyalty is open to question; it must prevent discrimination against minority groups; its fiscal management practices are under continuous scrutiny and criticism.⁴⁷ What the limitations and obligations of the Government as employer are considered to be by the Chief Executive and the Congress is discoverable in their official actions. Consequently, those executive and legislative actions which most clearly determine the status of grievance procedures and define their boundaries must now be given; it is these actions, as can be readily seen, that determine the nature of the various grievance procedures affecting Federal employees outside the United States. Because the procedures developed as a patchwork of special provisions of legislation or Executive order over a period of years,⁴⁸ it becomes necessary to examine some of the pertinent patches at this point.

While any selection of the basic authorities and regulations directly affecting the grievance procedures studied

47 Commission on Organization of the Executive Branch of the Government, Programs for Strengthening, 2-3.

48 This conclusion was reached by the Sub-Committee on Grievances and Appeals of the Federal Personnel Council in Grievances and Appeals, 9. The conclusion becomes apparent from study of the procedures themselves, as found in Chapters II, III, and IV herein.

herein is somewhat arbitrary,⁴⁹ it is believed that the following basic authorities and regulations will be satisfactory for the task at hand. Accordingly, the principle authorities and regulations which constitute the framework of development and administration of agency grievance and appeals procedures are outlined as follows:⁵⁰

The Lloyd-La Follette Act of 1912 contains the first affirmative legislation on employee rights and agency obligations in connection with employee grievances. Its provisions are limited to removals and suspensions and cover the following points: (1) No employee may be removed or suspended except for such cause as will promote the efficiency of the service; the reasons for removal or suspension must be given in writing. (2) The employee is to be given notice of the action being taken against him, and (3) he is to be given a reasonable time in which to file his reply.⁵¹ The Act, hailed as the Magna Carta of Federal employees,

49 An indication of the amount of legislation directly affecting the civil service is given by Ralph Sylvester Fjelstad, Congress and Civil Service Legislation, 1933-1947, Unpublished Doctoral Dissertation, Northwestern University, Chicago, Illinois, 1948; some 600 bills were considered, or introduced for consideration, during the period indicated.

50 The list in this thesis contains all the authorities and regulations given as basic by the Federal Personnel Council, Grievances and Appeals, 2-4; for greater clarity, however, the Council's list has been supplemented herein.

51 Ibid., 2.

was in reality weak; the rights granted were vague and remedies were non-existent.⁵²

Executive Order 7916, issued in 1938, made the first comprehensive approach to the problem of employee grievances in the Federal service. The Order required each Federal agency to have a published grievance procedure for employees, and the Civil Service Commission was authorized to establish standards on the basis of which agency procedures were to be evaluated; moreover each agency was required to submit its procedures to the Commission for approval.⁵³ This Order, and the standards therein, was superseded by Executive Order 9830, in effect since 1947.

The Hatch Act of 1939, and subsequent amendments, restricted the political activities of Federal employees and provided for the immediate removal of employees violating its provisions.⁵⁴ Bill No. HR 9023 of the 81st Congress, seeking to amend the punitive section of the Act by permitting the Civil Service Commission to impose a penalty less than removal, but not less than ninety days' suspension without pay, was vetoed by the Presi-

52 Carol Agger, "The Government and Its Employees," Yale Law Journal, New York, May, 1938, 1115-1120.

53 Federal Personnel Council, Grievances and Appeals, 3.

54 Ch. 410, 53 Stat. 1148, August 2, 1939, Sec. 9A and (9a); see also amendment Ch. 640, 54 Stat. 767, in U. S. C., Title 18, sec. 61h.

dent.⁵⁵

The Performance Rating Act of 1950 continued the provisions initiated by the Ramspeck Act of 1941, and permits Federal employees to appeal their performance (efficiency) ratings to boards of review which are not under the control of the employing agency.⁵⁶

The Veterans Preference Act of 1944, Section 14, provides that veterans shall have the right to appeal certain types of adverse agency personnel actions to the Civil Service Commission.⁵⁷

Executive Order 9835 of 1947 provided for the establishment of the Loyalty Review Board in the Civil Service Commission. The Hatch Act of 1939 had given the Commission authority, for the first time, to make anything like a character investigation concerning the loyalty of Federal employees. In 1942, President Roosevelt gave to the Commission the right to refuse employment to applicants when an investigation showed there were "reasonable grounds" to render their employment suspect; however

⁵⁵ U. S. Civil Service Commission, Major Civil Service and Related Legislation Enacted During the 81st Congress, Washington, D. C., October, 1950, 1. See also U. S. C. Cong. Service Legislative History, St. Paul-Brooklyn, 1951, 3277-3278. The remarks for the veto, however, seemed to approve the principle of the bill.

⁵⁶ Federal Personnel Council, Grievances and Appeals, 3; see also Spero, Government as Employer, 412.

⁵⁷ Federal Personnel Council, Grievances and Appeals, 3.

there was a lack of uniformity in the administration of the then-existing provisions, and the Congress asked the President, in 1946, to establish a committee to advise him on a revised program. Out of this committee's report there emerged Executive Order 9835 and the Loyalty Review Board.⁵⁸ It is the function of this board to review cases and to act on appeals made to it in connection with adjudication of cases involving loyalty under Executive Order 9835, Section 9A of the Hatch Act, or other relevant authority.⁵⁹ Executive Order 10241 later amended the original Order to provide for "reasonable doubt" concerning an employee's loyalty. This lessened the degree of proof required for judgment, but its practical effect was limited to applicants for employment, since most of the incumbents had already passed through the program.⁶⁰

Executive Order 9980 of 1948 provides that grievances involving charges of racial or religious discrimination can be appealed to the Fair Employment Board of the Civil Service Commission.⁶¹

58 Hiram Bingham, "Catching the Disloyal," U. S. News & World Report, Washington, D. C., November 23, 1951, 24; Mr. Bingham is Chairman of the Loyalty Review Board.

59 U. S. Civil Service Commission, Organization and Activities of the United States Civil Service Commission, Pamph. No. 36, Government Printing Office, Washington, D. C., 1950, 10.

60 Seth W. Richardson, "The Federal Employee Loyalty Program," Columbia Law Review, New York, Vol. 51, May, 1951, 535.

61 Federal Personnel Council, Grievances and Appeals, 9.

Bill No. HR 7439 (Public Law 733), passed by the 81st Congress to protect the national security, permits summary suspension or termination of civilian officers and employees of certain "sensitive" agencies, including the Departments of the Army, Navy, and Air Force, and the Department of State.⁶² This Public Law repealed Public Law 739 (Ch. 739, Sec. 3, 56 Stat. 1053, December 17, 1942) which provided for the summary dismissal of employees in the Departments of the Army and Navy during World War II.⁶³ The purpose of the present "security" law, Public Law 733, is to increase the authority of heads of agencies in sensitive activities to suspend summarily bad security risks and to terminate their services if subsequent investigation develops facts which support such action. This bill was designed to protect the Government from employees who are loyal but careless;⁶⁴ hence while it is closely related to the "loyalty" program, it is distinct from it, at least in theory.⁶⁵ The provisions of Public Law 733 permit the head of

62 U. S. Civil Service Commission, Major Civil Service, 2.

63 See U. S. Code Annotated, Titles 5-6, footnote, 335.

64 U. S. C. Cong. Service, Senate Report 2158 on HR 7439, St. Paul-Brooklyn, 1951, 3278-3279.

65 The distinction is maintained in the practical order with great difficulty, judging from Mr. Bingham's disclosures in "Catching the Disloyal," 22-27; with respect to the distinction in theory, note that Mr. Bingham states that "The President, in the last paragraph of Executive Order 9835, says, 'You will have nothing to do with security cases'." (page 23).

each of the "sensitive agencies previously mentioned to suspend employees "in his absolute discretion and when deemed necessary in the interest of national security." Provided that to the extent the agency head determines that the interests of national security permit, the employee is to be notified and have an opportunity to reply; however the decision of the agency head is to be final. The provisions further provide that the permanent employee is to be given, after his suspension and before his employment is terminated, (1) a written statement of charges, (2) an opportunity to answer, (3) a hearing, at the employee's request, by a "duly constituted agency authorized for this purpose," (4) a review of his case by the agency before a decision adverse to the employee is made, and (5) a written statement of the agency head of the final decision.⁶⁶

With respect to the "security" and "loyalty" programs, which provided for the establishment of security and loyalty boards within the agencies, Mr. Bingham reports that the Department of Commerce is the only agency having a separate security board; in other agencies the same board handles both types of cases.⁶⁷

The last of the basic authorities and regulations

⁶⁶ U. S. Code Annotated, Title 5, Sec. 22-1; Public Law 733 is cited as "Act August 26, 1950, Ch. 803, Sec. 4, 64 Stat. 477."

⁶⁷ Bingham, "Catching the Disloyal," 25.

which need mention can be called "Civil Service Commission standards for agency grievance procedures." These standards derive from Executive Orders 7916 and 9830 previously mentioned.⁶⁸ By virtue of the various civil service laws, the Commission is given authority to prescribe certain standards to be met by agencies, for example, standards with respect to fair employment practices, as previously described. Further, the Commission is given authority for reviewing and deciding employee appeals from the following types of agency personnel actions: reductions-in-force, veterans' appeals, classification appeals, loyalty appeals, and "fair employment" appeals.⁶⁹

The foregoing laws and regulations vary in their effects on agency responsibility in grievance-handling. For example, the regulations of the Loyalty and Fair Employment Boards require full consideration of appeals within the agency before appeal is made to the Civil Service Commission; the Performance Rating Act, however, and the Veterans Preference Act enable employees to appeal to the appropriate Board of Review outside the agency before using agency procedures.⁷⁰ There is, in short, a multiplicity of channels in existence through which various types of grievances

68 Federal Personnel Council, Grievances and Appeals, 3; the Council also lists "Civil Service Commission standards" as the last of its list of basic laws and regulations constituting the framework of agency grievance procedures.

69 Ibid., 25.

70 Ibid., 26.

are to be taken. Many agencies, by virtue of the foregoing laws and regulations, have separate channels for grievances involving position classification, performance rating, removal, and discrimination;⁷¹ the laws and regulations enable them to exclude such types of grievances from their regular grievance procedures and to consign them to special channels.

The regular grievance procedures affecting Federal employees outside the United States, which procedures govern the handling of the ordinary grievances arising out of working conditions, now remain to be considered.

⁷¹ Ibid., 9.

CHAPTER II

STANDARDS FOR EFFECTIVE AGENCY GRIEVANCE PROCEDURES

There are several ways in which the various grievance procedures affecting Federal employees overseas may be presented; each way, however, has its limitations. The procedures, for example, could be presented according to the types of grievances involved. As we have seen, however, the basic laws and regulations allow agencies to exclude a number of grievance-types from their regular grievance procedures.¹ A presentation by type of grievance is further complicated by the fact that some agency procedures do not state explicitly what types of grievances are to be excluded from its procedures.² Consequently, an attempt to present agency procedures in terms of grievance-types would necessitate a lengthy statement of what types of grievances, as far

1 A total of eleven different types of grievances are excluded from the procedures of the nine Federal agencies under consideration.

2 The grievance procedure of the Department of the Interior, for example, simply states that its procedures are to be utilized "to solve the majority of the work relationship problems that occur;" see Department of the Interior Supplement to the Federal Personnel Manual, Chapter ID-E2 "Employee Relations," 5.

as it was possible to tell from the language employed, were to be excluded, whether such exclusions were the result of statute or the exercise of agency discretion, the reasons therefor, and various other pertinent circumstances. Moreover the provisions of each procedure would have to be given, point-by-point, on an individual basis, an effort which would make anything like a comparative study difficult, if not impossible.

The method of presentation selected for this study seemingly has relatively few limitations. Setting down, in the first place, the pertinent basic authorities and regulations serves several purposes: (1) there is no need to repeat them each time an agency procedure is discussed; (2) they point out the framework of development and administration of agency procedures; and (3) they establish the fact that certain types of grievances are excluded from agency consideration by statute or by the exercise of administrative discretion on the part of the agency. These preliminary steps having been taken, the task of presenting the procedures established by the nine Federal agencies having more than two thousand employees overseas can be begun. The method employed consists of relating agency procedures to the standards established by the Civil Service Commission for effective agency grievance procedures; these standards are the points common to all procedures.

The standards, eleven in number, are found in Chapter E2, "Employee Relations-Grievance Procedures," of the Federal

Personnel Manual previously referred to.³ Some idea of the latitude given the agencies to enable them to develop grievance procedures within the framework of existing statutes and regulations is found in the fact that Chapter E2 is only two pages in length; moreover most of the space is used for the simple enumeration of the standards themselves. Chapter E2 states that the regulatory background of the chapter is found in Executive Order 9830 referred to on page 20 herein. The chapter further states that, with respect to the standards applied in the Commission's review:

The Commission will apply the following standards in determining whether or not to approve a proposed grievance procedure. Administrative procedures and details will, of course, differ from agency to agency, because of differences in points of view or in prevailing conditions.

Adherence to the letter and spirit of these standards should produce a grievance procedure which will improve morale, working conditions, and efficiency.⁴

The First Standard for an Effective Agency Grievance Procedure:

Both supervisors and employees should have an opportunity to take part in developing and formulating the procedure.⁵

This standard recognizes the importance of securing

3 This Manual is the official medium of the Civil Service Commission for issuing its personnel regulations, instructions, and suggestions to Government agencies; it is printed in loose-leaf revisable form only, with revisions and additions being issued once every three months; further information concerning the Manual may be found in Form INF-33, "Information About the Federal Personnel Manual," Civil Service Commission, Washington, D. C.

4 Federal Personnel Manual, Chapter E2, (TS 286), E2-1.

5 Ibid.

staff cooperation and participation, a movement which began shortly after World War I.⁶ The movement received considerable impetus from various employee associations,⁷ but by 1942 the Civil Service Assembly spoke of the "comparatively undeveloped status of employee-management consultation in American governments."⁸ That the movement for employee participation in the development of agency grievance procedures is still in a somewhat rudimentary stage can be seen in a comment of the Sub-Committee on Grievances and Appeals: ". . . there is plenty of evidence that employees and employee unions lack confidence in the grievance machinery of individual agencies and are anxious to preserve and extend existing rights of appeal outside the employing agencies." (Emphasis added).⁹

Of the nine Federal agencies whose grievance procedures are studied herein, no procedure makes an explicit statement encouraging employee participation in developing the procedures. Perhaps the Department of the Air Force comes closest to meeting this standard in stating that employees should be encouraged "to

6 William E. Mosher and J. Donald Kingsley, Public Personnel Administration, 2nd ed., New York, 1936, 473.

7 For the part of employee associations in the movement, see Chapter VII, Civil Service Assembly, Employee Relations or Spero's Government as Employer; nearly all books on public administration mention the movement and employee associations.

8 Civil Service Assembly, Employee Relations, 221.

9 Federal Personnel Council, Grievances and Appeals,

make known their attitudes, opinions, and recommendations on matters affecting the conditions of their employment."¹⁰

Since grievance procedures are not static in nature, they should contain provisions encouraging employee participation in their development. Such participation could be accomplished on an individual basis through use of a "suggestion box", and on a group basis through committee activity in employee associations.

The Second Standard:

The Director of Personnel of the agency, or some other appropriate official, should have full responsibility for the administration of the procedure; he should maintain an "open-door" policy.¹¹

This standard originated from the 1937 President's Committee on Administrative Management which recommended that an Executive Order be issued establishing grievance procedures in Federal agencies.¹² Accordingly, Executive Order 7916 was issued by President Roosevelt in 1938, as described on page 20 herein. This Order established a personnel division in each of

¹⁰ Air Force Manual 40-1, Chapter AF E2, December 27, 1949, TS 11, Section 1, paragraph 2.

¹¹ Federal Personnel Manual, Chapter E2, TS 286, E2-1.

¹² See Part II, "Studies of Administrative Management in the Federal Service," by Reeves and David, in The President's Committee on Administrative Management, Government Printing Office, Washington, D. C., 1937, 59-133; note page 115 especially.

the major agencies.¹³ Executive Order 9830, which brought 7916 up to date and superseded it, puts the responsibility for personnel management upon the head of the agency, who is directed to appoint a director of personnel.¹⁴ This latter official is to establish grievance procedures which are to take effect after they receive the official approval of the Civil Service Commission and the head of the agency.¹⁵

Examination of the grievance procedures of the agencies under consideration reveals that the Directors of Personnel, or equivalent officials, are given, either explicitly or implicitly, full responsibility for the administration of the procedures. The procedures of four of the agencies, however, warrant special comment: (1) The procedure of the Department of the Army contains a provision that installations in the "field", i. e., outside Washington, D. C.,¹⁶ may publish such supplementary instructions as are considered necessary; however any desired deviation from the procedures outlined by the Department is to be

13 Commission on Organization of the Executive Branch of the Government, Programs for Strengthening, 2.

14 U. S. C. Cong. Service, 80th Cong., 1st Sess., 1947, St. Paul, Brooklyn, 1947, 1973-1974.

15 Federal Personnel Manual, Chapter E2, E2-1.

16 The "field service" includes officials and employees outside the headquarters force (the "departmental service"), scattered about the country and in foreign areas; these terms are widely used and may be found in Hyneman, Bureaucracy in a Democracy, 392; see also Harry B. Mitchell, "Civil Service," Encyclopedia Americana, New York-Chicago, 1949, Vol. 7, 3.

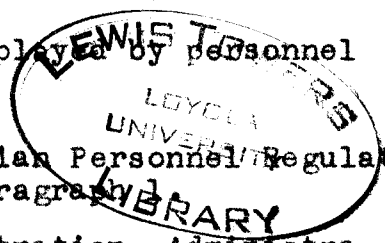
submitted to the Department Personnel Division for prior approval.¹⁷ A provision of this nature insures a measure of consistency and equity in the administration of grievance procedures in the field and should consequently be incorporated into the procedures of the other agencies. (2) The procedure of the Economic Cooperation Administration mentions that information on appeal procedures can be obtained from the Director of Personnel, designated members of his staff, "or by personnel officials overseas."¹⁸ This is one of the few references made by any of the agencies to overseas personnel. (3) While most of the procedures of the agencies stress the advisory role of personnel officials, the Department of Commerce allows personnel officers, under certain conditions, to "investigate" grievances in an effort to reach an equitable decision,¹⁹ thus extending their advisory role. (4) The Department of the Interior, on the other hand, fails to mention the role of personnel officers; moreover bureau heads are asked to delegate authority for administering the procedures to certain managers and supervisors,²⁰ thus weakening the constructive role that could be played by personnel

17 Department of the Army Civilian Personnel Regulations No. E2, November, 1948, Section 1, paragraph 1.

18 Economic Cooperation Administration, Administrative Instructions Manual, June, 1949, 3.

19 Department of Commerce, Manual of Orders, Part 2, Administrative Order No. 202-2 (Amended), May, 1949, Section 3.

20 Department of the Interior, Supplement to the Federal Personnel Manual, Chapter ID-E2, March, 1951, 5.



employees.

While the procedures of all agencies imply that an "open door" policy is maintained by Departments of Personnel, its maintenance is best insured by equitable grievance procedures. With respect to industry, Richard P. Calhoun, a former industrial personnel director, has said "Companies delude themselves when they say employees know that the boss's door is open at all times . . . employees are reluctant to go over their supervisor's head--and with good reason."²¹ The same can be said of Federal agencies and their employees.

The Third Standard:

There should be a simple and orderly method of grievance handling whereby the employee may present his grievance within the agency to his own supervisor and carry it up the line of authority, if he feels it is warranted, to the head of the agency.²²

The various grievance procedures affecting Federal employees overseas can be seen most clearly in terms of this standard, particularly if a certain amount of detail is excluded from consideration herein. While the exclusion of detail deemed irrelevant is somewhat arbitrary, an effort will be made to secure

²¹ Richard P. Calhoun, Problems in Personnel Administration, New York, 1949, 356.

²² Federal Personnel Manual, Chapter E2, E2-1-2.

clarity of presentation without sacrificing the letter or spirit of the procedures. To this end, therefore, the procedures are first discussed according to the four stages of grievance-handling that are common to the procedures of all nine agencies.²³

(1) The first stage: the employee brings his grievance to the attention of his immediate supervisor.

The procedures of all nine agencies stress the importance of satisfactory adjustment at this point, the point considered by both government and industry to be the most logical and effective.²⁴ Adjustment at this stage is generally spoken of as "informal" and grievances are not reduced to writing; conversation between the employee and his immediate supervisors constitutes this first stage. The Federal Personnel Council, through its Sub-Committee on Grievances and Appeals, indicates the importance of attempting adjustment at this stage when it states that:

It is a necessary assumption of formal grievance procedure that the great majority of employee complaints and dissatisfactions will be informally adjusted between the employees and supervisors directly concerned, long before they reach the stage of formalized grievances. The importance of resolving grievances between those most directly

²³ The Hoover Commission outlines the grievance procedure of a large Federal agency (un-named) in a similar manner; the Commission's chart, however, shows five stages of grievance-handling, rather than the four shown herein. Since one of the stages is intended primarily for employees in the United States (the fourth stage of the Commission chart), it has been omitted; see Commission on Organization of the Executive Branch of the Government, Programs for Strengthening, Chart X, 65.

²⁴ Federal Personnel Council, Grievances and Appeals, 11-13; see also Calhoun, Problems, 350-352.

concerned cannot be over-emphasized.²⁵

The great majority of grievances are, in fact, informally adjusted at this first stage. Most of the appeals reaching the "formal" stages of a procedure are appeals of a serious nature, usually involving suspension, demotion, or removal.²⁶

Because resolution of grievances at this stage saves time and money and preserves the employment relationship which would be disrupted by "winning" or "losing" a case before an appeal board,²⁷ agencies should train their supervisors in the techniques of grievance-handling.

(2) The second stage: if a satisfactory adjustment is not reached in the first stage, the employee brings his grievance to the supervisor next highest in authority.

There is some variation in the procedures of the agencies as to how this stage is to be administered. The Department of the Army and Air Force permit the grievance to be presented orally; the Departments of Commerce and State,²⁸ and the Economic Cooperation Administration require the grievance to be

14. 25 Federal Personnel Council, Grievances and Appeals,

26 Ibid., 5.

27 Ibid., 14.

28 Department of State, Regulations and Procedures on the Adjustment of Grievances, 382, dated March 11, 1949, section 382, 2.

presented in writing; the Departments of the Interior and Navy,²⁹ and the Department of Agriculture,³⁰ make the method of presentation optional; the Panama Canal and Panama Railroad Company³¹ is silent on the matter. While reducing the grievance to writing clarifies the issues, it may also sharpen them, a factor which management considers in determining the time at which the grievance should be reduced to writing; such determination, therefore, is rightly left to the discretion of the agency.³²

Two of the agencies, the Panama Canal and Panama Railroad Company, and the Department of the Navy, permit the employee to request a hearing by the supervisor in charge of the office or shop. Since the procedures of both agencies provide for a hearing by a grievance board in the third stage of the procedure, there would seem to be little value in a hearing by an individual at this point.

(3) The third stage: if the supervisor to whom the grievance is presented in the second stage cannot make an adjustment thereof which is satisfactory to the employee, the employee brings his grievance to the head of his bureau, office,

29 Department of the Navy, Navy Civilian Personnel Instructions, 80, May, 1948, 2.

30 Department of Agriculture, Personnel Relations Appeals Procedure, Chapter 45, 648.

31 Panama Canal and Panama Railroad Company, Employee Relations, Chapter E2.

32 Federal Personnel Council, Grievances and Appeals, 19.

or installation for formal hearing before an appeal board.

The Sub-Committee on Grievances and Appeals has pointed out that "From the standpoint of both management and the employee the hearing is the keystone of the grievance procedure."³³ The procedures of all agencies except the Department of State provide for a hearing in this stage. This latter Department provides that an aggrieved employee is to seek adjustment "informally" through correspondence in supervisory channels leading up to the chief of his division or the director of the appropriate office; the next stage provides for a formal hearing before a committee on appeals established by the Chief of Departmental Personnel, in the name of the Assistant Secretary of State for Administration, whose decision is the final one.

As has been previously mentioned, a hearing is the keystone of the grievance procedure. A hearing, however, obviously means little to an employee unless he has confidence in the impartiality of the hearing body. As the Sub-Committee on Grievances and Appeals has concluded, "impartiality" is largely defined in terms of the manner by which members of hearing boards are selected. It is important, therefore, that the manner of selection, as provided for in the procedures of the agencies under survey, be analyzed.³⁴

33 Ibid., 20.

34 Ibid., 20-21.

Two methods of selecting the members of hearing boards are encountered in the procedures of the eight agencies employing this third stage of grievance-handling. The first method provides for some form of employee participation in the selection of members: In the Department of Agriculture, management selects one member, the aggrieved employee selects one member, and these two members select a third; in the Economic Cooperation Administration a similar method is employed, the appropriate overseas official selecting the first member, the appellant the second, with the third member being named by the first two. The Panama Canal and Panama Railroad Company grants a hearing before the division or bureau head in this third stage, but provides for employee participation in the selection of a grievance committee in the fourth stage. This committee is composed of two members, one of whom is appointed by the Governor-President, the highest office in the organization, while the second member is chosen by the appellant from an employee panel; this panel of employee representatives is established by the Governor-President upon nomination by organized groups of employees, including labor unions, and by direct election among other employees.

The second method of selecting members of hearing boards provides for selection by management: In the Departments of the Interior, the Army, Air Force, and Navy the members of the boards are appointed by management; in the Department of Commerce, the members are nominated by management and appointed by

the Director of Personnel. This method of selection does little to assure the aggrieved employee that his appeal will be heard by an impartial board. In the words of the Sub-Committee on Grievances and Appeals, "Unilateral selection by management subjects the board to suspicion of management domination and detracts from its prestige as a fact-finding group."³⁵ As was evident from the first standard of an effective agency grievance procedure, employee participation in the development of procedures is of value and should be recognized. The above-named agencies that do not provide for such employee participation consequently cannot be said to be abiding by the spirit of this third standard. While they meet the requirements of the letter, they neglect the spirit.

The method of selection provided by the Panama Canal and Panama Railroad Company, in which selection is made from a standing panel, offers certain advantages not found in other procedures. In the first place, it encourages employee interest and participation, for the employee representatives are secured from organized groups and by direct election from non-organized employees. Secondly, selection from a panel encourages the establishment of both a specialized and well-qualified hearing board, for the panel can be made up of persons who have been chosen by management and employees because of their familiarity with various

35 Ibid., 21.

organizations and problems.

The Department of the Navy Grievance Appeal Board, established to assist the Under-Secretary of the Navy, while it is not democratically chosen, also furnishes an example of a more or less specialized hearing board. This Board consists of three appointed members, two from the Personnel Division, and one from the bureau or office concerned in the appeal, e. g., the Bureau of Ships, or the Bureau of Aeronautics.

(4) The fourth stage: if satisfactory adjustment has not been achieved at the third stage, the aggrieved employee appeals to the head of the agency, or an equivalent official, for review and final decision.

Normally, review is made on the basis of the record; however the Department of the Navy provides for another hearing at this higher level (described above) if such hearing is requested by the employee, and provided that in the opinion of the hearing board additional information is necessary. The Department of Commerce stipulates that it will review a case only to the extent necessary to determine whether the basic principles and procedures have been adhered to; this stipulation, in which a kind of negative force is implied, is not calculated to inspire employee confidence, particularly in view of the fact that the Department's hearing board in the third stage is nominated by management.

The four stages of grievance-handling just described

represent agency efforts in adhering to the standard requiring the existence of a channel in which a grievance may be carried through successively higher stages of authority to the head of the agency. From the foregoing description it would appear that each agency had, in fact, established a relatively simple and orderly procedure for handling all grievances that might arise. However, this is not quite the case. As was indicated in Chapter I, grievance-handling in the Federal service developed as a patchwork of special legislation and Executive order over a period of years. As a result, agencies are not required to have a single, simple, and orderly procedure for handling grievances; as may be ascertained from the basic laws and regulations given earlier, agencies are enabled to have a separate channel for grievances involving position classification, performance-rating, racial and religious discrimination, reduction-in-force, and various other personnel matters in which they may exercise administrative discretion. The result: a multiplicity of channels exists, a source of confusion to employees, supervisors, and agency officials, and a cause of general dissatisfaction.³⁶ The improvement of written grievance procedures could well begin with this situation, especially since the integration of separate procedures and channels does not require any changes in Civil Service regulations.³⁷

36 Ibid., 9.

37 Ibid., 17.

Loyalty cases, being an exception, would continue to be handled as such.³⁸ Improvement, in short, could be made within the frame-work of existing laws and regulations through the issuance of a directive calling for a unified grievance and appeal system by the Civil Service Commission.

An examination of the preceding three standards and relevant agency provisions indicates that grievance procedures as a whole indicate a reluctance toward securing employee participation in developing and formulating the procedures themselves. Regulations arising, at least in part, from within a group are more likely to be accepted cooperatively than those imposed upon the group from the top down. For this reason, and because supervisors and employees have a knowledge of working conditions and relationships not accessible to top management, both supervisors and employees should be encouraged by the provisions of grievance procedures to participate in their development.

Where field installations are allowed to deviate from the agency's procedures, prior approval by agency personnel officials of such proposed deviation should be made mandatory in the interests of consistency and equity.

The grievance procedures as a whole rightly put the task of making the procedures work effectively upon the personnel

38 Ibid.

divisions of agencies. The role of personnel officials is that of staff officers, i. e., an advisory body concerned with the interpretation and application of grievance procedure provisions and other personnel matters. Agencies that incline to extend the role of personnel officials into investigative and arbitratative bodies run the risk of loosing employee confidence in these officials.

The existence of an "open door policy" is not of itself able to inspire employee confidence; such a policy must be implemented with equitable grievance procedures.

The grievance procedures of the various agencies provide a relatively simple and orderly method, except for the question of exclusions, whereby an aggrieved employee is able to present a grievance within his agency to his immediate supervisor and carry it up the line of authority to the head of the agency. Procedures rightly stress the importance of adjustment at the supervisory level; consequently agencies that do not train their supervisors in the techniques of grievance handling should do so.

Because a hearing is the keystone of the grievance procedure, and because a hearing means little to employees who do not have confidence in the impartiality of the hearing committee, employees should be permitted to participate in the selection of members to serve on this committee. Selection should be from a panel established through employee-employer cooperation, with due regard not only for the impartiality of panel members, but also

for their knowledge of particular organizations and problems; this would insure not only an impartial hearing body, but a well-qualified one as well.

If an adequate hearing is conducted at a level below that of the agency head, there does not appear to be any advantage to the parties concerned in holding an additional hearing within the agency at any agency-head level. However, the employee who alleges, with offer of proof, that his rights have been violated at the hearing level should be given the right to a review, on the basis of the record, by the agency head.

A multiplicity of grievance-handling channels exists among the agencies. Agencies can and should integrate their separate procedures into a unified system. Loyalty cases, a unique type of grievance, should continue to be handled as such.

The various grievance procedures affecting Federal employees overseas, and the relationship of the procedures to more standards of effective procedures, are examined in Chapter III, which follows immediately.

CHAPTER III

STANDARDS FOR EFFECTIVE AGENCY GRIEVANCE PROCEDURES, CONTINUED

The Fourth Standard for an Effective Agency Grievance Procedure:

The procedure must recognize the responsibility of supervisors at all levels to receive and act fairly and promptly on all grievances; further, that supervisors must be given the authority to carry out this responsibility.

The procedures of all the agencies under consideration give recognition, either explicitly or implicitly, to this requirement. The Department of State and the Economic Cooperation Administration, while recognizing the responsibility of supervisors to receive and act fairly and promptly on grievances, do not go into detail in the matter. The other agencies acknowledge the responsibility of supervisory personnel in more detail, as may be seen in the following provisions: The Department of Commerce relates the responsibility in grievance handling to the responsibility of maintaining good employee relations in general; basic responsibility therefor rests with first-line supervision, which is directed to give continuous, careful attention to all

phases of employee relations.

The Panama Canal and Panama Railroad Company states that the ability of a supervisor will be measured to a large extent by his ability to carry out agency personnel policies and to adjust grievances in accordance with agency procedures. The Department of the Navy, moved perhaps by similar ideas, requires all levels of supervisors to be trained in their responsibilities with respect to grievance handling; however it discloses that the initiation of a grievance in good faith is not to be considered a reflection upon either the supervisor or the employee.

The Department of Agriculture, like the Departments of the Navy, Air Force, and Army, specifically states that employees presenting grievances are to do so free of restraint, coercion, discrimination, and reprisal. The Department of Agriculture and the Department of the Navy provide that disciplinary action is to be taken where supervisory personnel have discriminated against employees presenting grievances. The possibility of discrimination against an employee whose grievance has been found justifiable has been lessened somewhat by the Department of the Army; this agency spells out in some detail the need for remedial action to be taken by the installation in order to avoid a repetition of the same type of grievance arising again.

While all of the procedures stress the importance of the supervisor's role in grievance handling, nothing is explicitly given as to their authority in effecting adjustments. It is as-

sumed, apparently, that supervisors know the lengths to which they may go in fulfilling the responsibilities given them.

The Department of the Navy takes an excellent approach to meeting this fourth standard by reason of the following: (1) it recognizes that conditions conducive to employee dissatisfaction will arise in any organization,¹ (2) it recognizes the importance of bringing to light and adjusting grievances promptly through the use of effective grievance procedures, (3) it states that benefits can be derived from so doing, and that these benefits are in direct proportion to the skill and good judgment exercised by supervisory personnel in grievance handling, and (4) it provides that such personnel are to be trained in grievance handling. It is recommended, therefore, that other agencies follow suit, supplementing their grievance procedures with a supervisor's handbook on grievance handling; however such a handbook should not be confined to the single topic of grievance handling, but should be designed to promote good employee relations in general.

The Fifth Standard for an Effective Procedure:

In the case of a grievance carried beyond the super-

1 The Civil Service Assembly sees this condition as arising from the employee's struggle to retain his individuality; see Employee Relations, 1-2. Mosher and Kingsley also share the opinion that "Where any considerable group of human beings are thrown together intimately, maladjustments are bound to arise" regardless of how well the organization is run and how up-to-date its housing and equipment are; see Public Personnel Administration, 479.

visor, all facts pertaining thereto should be in writing; decisions rendered are likewise to be in writing.

As was pointed out on pages 36 and 37, there is some variation in the procedures of the different agencies as to the exact point at which grievances are to be reduced to writing. In general, however, a grievance is to be reduced to writing after it has passed the immediate supervisor's stage. Agencies, in fixing the time at which the grievance is to be reduced to writing, are governed by two considerations: (1) an oral presentation of a grievance makes for informality; consequently employee-supervisor relationships are more easily maintained. (2) An oral presentation is prone to be ambiguous; reducing it to writing makes it less ambiguous--but doing so may intensify feeling and hence aggravate the situation.² The grievance procedures of the agencies under consideration indicate an awareness of these two considerations with respect to timing the written presentation of grievances. The Grievances and Appeals Sub-Committee of the Federal Personnel Council has recommended that all grievances be reduced to writing "for presentation to the hearing board, or at an earlier stage if circumstances make it advisable."³ This recommendation has been observed by the agencies studied herein.

2 Federal Personnel Council, Grievances and Appeals, 19.

3 Ibid.

The Sixth Standard:

Prior to the time the head of the agency makes his final decision, an employee should be given an opportunity to present his case to either a permanent or an ad hoc board whose recommendations should be advisory and designed to guide the head of the agency.

As has been pointed out under the remarks on the third standard concerning the stages of grievance-handling, all the agencies under discussion provide for a hearing when the grievance cannot be satisfactorily adjusted at a lower level. Remarks made under the third standard, it will be remembered, were concerned primarily with the question of the impartiality of hearing boards. Two additional considerations respecting an employee's opportunity of presenting his case before a hearing board merit comment at this point.

In the first place, it might appear from the standards and provisions covered thus far, that an employee is afforded a large measure of job security because of the existence of grievance procedures within his agency. This is not entirely true, however, because of the fact that the removal of an employee may be effected by his agency without giving him access to agency grievance procedures. This is apparent from the uniform regulations governing separation for cause (other than because of an unsatisfactory efficiency rating) which follow: (1) A statement of charges must be filed by the agency which sets forth specific-

ally and in detail the charges preferred. (2) A reply may be made by the employee in which he answers the charges in writing and furnishes affidavits in support of his answer. (3) There is consideration of the reply by the agency, but the employee is not entitled to a hearing except in the discretion of the agency. If the removal is consummated by the agency, the employee must be notified in writing of the reasons therefor. (4) A formal appeal may be made to the Civil Service Commission by the discharged employee, but the Commission will not review the agency's action unless the employee alleges, with offer of proof, that the foregoing three procedures were not followed, or that the removal was made because of marital status or race, or for political or religious reasons. A veteran, by virtue of the Veterans Preference Act, may appeal to the Commission on any ground and receive a full review and hearing.⁴

Agency procedures vary with respect to the foregoing regulations. The Economic Cooperation Administration excludes appeals in re removals from consideration under its regular grievance procedures. The Department of Agriculture provides that an appeal may be made directly to the Civil Service Commission if an employee feels that proper procedure was not followed in effecting his removal. The Department of the Interior is much less spec-

⁴ Commission on Organization of the Executive Branch of the Government, Programs for Strengthening, 63. See also the Lloyd-La Follette Act in Chapter I.

ific, simply stating that when a problem reaches the point where the ability of the employee "to promote the efficiency of the service is at stake, or there is evidence of irregularities or misconduct, the case should be referred for investigation, or removal action initiated." The Departments of the Air Force and Army provide access to former employees to agency grievance procedures within certain time limits. The Departments of State and of Commerce, the Panama Canal and Panama Railroad Company, and the Department of the Navy prefer to remain silent on the removal problem.

There are many opinions as to whether it is possible, difficult, or easy to remove Federal employees for cause, and a number of reasons are advanced to support the opinions.⁵ The reason for so many differences probably lies in the fact that reporting methods do not promote good statistical compilation and interpretation. Figures furnished the Civil Service Commission, for example, on removal rates do not necessarily include employees who have been allowed to resign in the face of dismissal.⁶ Some observers maintain that the statutory provisions governing dis-

5 See Spero, Government as Employer, 39; White, Introduction, 426; Cahn, "Federal Employees in War and Peace," 165-166, 171; Commission on Organization of the Executive Branch of the Government, Programs, 62-72; Hyneman, Bureaucracy, 407; and footnote 6 following.

6 See Barbara Brattin, "The Dismissal Pattern in the Public Service," Public Personnel Review, Chicago, October, 1947, 211-215; the author reports 46,875 dismissals in 1946, called "official dismissals."

cipline are too restrictive, others that the provisions are all right, but that the Civil Service Commission makes it difficult to remove an employee, while still others maintain that neither the law nor the Civil Service Commission present a serious obstacle to removal action initiated by competent administrators.⁷

Whether or not it is too difficult or too easy to effect the removal of employees is beyond the purpose of this report. What matters primarily with respect to this report is that removals can be effected within the agencies before the employee is given access to grievance and appeals machinery. This managerial prerogative, however, is hardly calculated to inspire employee confidence in his agency. It was doubtless the recognition of this fact which moved the Federal Personnel Council to recommend that the agency give to the individual his rights to the grievance procedure and follow with a decision, rather than to discharge him and then notify him of grievance machinery within the agency, or outside it in the Civil Service Commission.⁸

The Sub-Committee on Grievances and Appeals has disclosed how this can be done: (1) Prior to filing a statement of charges, the agency should give evidence that constructive efforts were made to help the employee succeed; (2) there should be evidence that fair warning was given and that a reasonable trial period

7 Hyneman, Bureaucracy, 407.

8 Federal Personnel Council, Grievances and Appeals,

followed the warning; (3) the employee should not be confronted with new matters in the way of charges; the charges should be limited to matters already on record and documented.⁹ In short, an agency's regular grievance procedure should be utilized to effect removals; it should stand up under the pressure generated by a removal action. This can be done if the removal action is properly prepared by management with the idea in mind that the action may be tested against the grievance procedure, including a hearing. This would serve to protect both employee and employer. In the case of the former, the possibility that the grievance will be heard by a hearing board safeguards the employee against dismissal for purely arbitrary reasons; in the case of the latter, the government is given an equitable method of dismissing an unsatisfactory employee while at the same time assuring all other employees that the demands of justice have been met.

The second consideration respecting an employee's opportunity of presenting his case before a hearing board which deserves attention is this: How is this hearing board to function? The procedures of the agencies in question throw little light on this question. With the exception of the Department of the Army, the procedures devote little more than a few words to the functioning of hearing boards; moreover their duties are stated in the

9 Ibid., 6.

most general of terms, viz., "to conduct a hearing, to learn the facts, and to make a decision."

It may be said that the procedures are more interesting for what they include regarding the functions of hearing boards than for what they exclude: The Economic Cooperation Administration, the Departments of the Army and Air Force, and the Department of Commerce, for example, state that hearings are to be informal and non-legalistic. The Economic Cooperation Administration discloses that the board will determine which witnesses it shall hear, whereas the Department of Agriculture says it will hear witnesses "as necessary including any suggested by the employee." The Department of the Army discloses that the board is to determine the relevancy of material and goes into some detail concerning the board's function, setting forth the duties of the Chairman of the board, and the rules of evidence to be observed. The Department of the Navy, on the other hand, simply states that the board is to establish its own internal procedure.

Because the value of a hearing can be completely vitiated, at least in the eyes of an aggrieved employee, by the ignorance or wilfull wrongdoing of board members, it is recommended that agency grievance procedures respecting hearings be supplemented with a handbook. This handbook should describe the rights and duties of the principals involved in enough detail to assure an aggrieved employee that his case will be heard on an objective basis. Questions concerning the summoning of witnesses, the rele-

vancy of evidence, the duties of the Chairman, the time and place of hearings, the keeping of records and their availability to the aggrieved are so close to the heart of a hearing that they must be set forth for the guidance of all concerned.

The Seventh Standard:

An aggrieved employee should be given a reasonable amount of official time in which to prepare and present his grievance.

Here again there may be found a wide variation in the provisions of agency grievance procedures relating to a standard. Some of the agencies have liberal provisions, from the employee's point of view, while other agencies have restrictive provisions.

While all agencies authorize absence without charge to the annual leaves of aggrieved employees, i. e., "official time," and generally to their representatives and witnesses participating in the presentation of a grievance, most of the agencies are vague on the question of granting official time in which to prepare grievances. The Department of Agriculture, for example, merely states that "Time spent on appeals is official duty." The Department of the Interior and the Economic Cooperation Administration, on the other hand, specifically provide absence without charge to leave for both the preparation and presentation of grievances. The Department of the Navy gives permission to commanding officers of installations to permit official time being

given, but states that as a general rule an employee or group of employees should not be given official time in which to prepare a grievance.

The Department of Agriculture and the Departments of the Air Force and Interior provide that, if funds are available, employees may be authorized travel funds if their presence is required at hearings, whereas the other agencies are silent on this point. The Department of Agriculture, the Economic Cooperation Administration, and the Department of the Interior specify that hearings are to be held as closely as possible to the locality in which the grievance originated or in which the principals reside.

The provisions relating to this standard point out, perhaps more clearly than do provisions relating to other standards, a weakness in all agency procedures included in this study. This weakness, varying from provision to provision and from agency to agency, manifests itself in an absence of what the Subcommittee on Grievances and Appeals terms "auxiliary provisions." These auxiliary provisions of a grievance procedure consist of more or less detailed statements as to the administrative arrangements to be made and followed in grievance handling.¹⁰ When these administrative arrangements have been set down in detail, grievances can be processed more easily, delay and correspondence can be avoided, along with administrative embarrassment, and many

¹⁰ Ibid., 22.

potential controversies eliminated. It is recommended, therefore, that auxiliary provisions be published by the agencies concerning such matters as the time and place of hearings, the granting of official time for preparation and presentation of grievances, the conditions under which travel is authorized, and the preparation and maintenance of records.

An examination of the preceding four standards and relevant agency provisions indicates that supervisors could carry out their responsibilities in connection with grievance handling more effectively if they were trained to do so; further, they should have access to a supervisor's handbook explaining agency policies and requirements with respect to the maintenance and promotion of good employee relations and grievance handling.

All agencies require that grievances be reduced to writing at some stage in the grievance procedure. The exact point at which the grievance is to be written varies from agency to agency, in accordance with the needs of the individual agency. The choice of a proper point is best left to the discretion of the agency.

An employee's feeling of job-security is lessened by the fact that he may be removed from his job before he is given recourse to a grievance procedure. For purposes of morale, as well as to insure justice being done to both employee and employer, removal actions should be prepared in such a way as to stand up of themselves under agency grievance procedures. In this way an

employee may be given his right to the grievance procedure before he is dismissed.

Because a hearing is the keystone of a grievance procedure, and because agency procedures as a whole do not mention in sufficient detail the rights and duties of principals, the summoning of witnesses, the relevancy of material, and similar matters vital to the proper conduct of a hearing, agency grievance procedures should be supplemented with an appropriate handbook for hearing committees.

The auxiliary provisions concerning the administrative arrangements to be made in connection with grievance handling are either lacking altogether or are not given in adequate detail. Each agency, therefore, should facilitate grievance handling and avoid potential controversies by providing appropriate auxiliary provisions for the guidance of all concerned.

The examination of grievance procedures affecting Federal employees overseas, and the relationship of the procedures to the last four standards of effective procedures, is continued in Chapter IV following.

CHAPTER IV

STANDARDS FOR EFFECTIVE AGENCY GRIEVANCE PROCEDURES, CONCLUDED

The Eighth Standard for an Effective Agency Grievance Procedure:

An employee should be unimpeded and free from restraint, coercion, discrimination, and reprisal in presenting his grievance.

The grievance procedures of all nine agencies under consideration contain statements of this standard. In general, these statements follow the standard almost word for word. The Department of Agriculture, however, states the standard in slightly more detail and extends the principle enunciated in the standard to the seeking of information for use in presenting a grievance. This Department adds a warning sentence to its statement of the standard: Disciplinary measures are to be taken if violations of the standard are reported, a provision similar to one found in the Department of the Navy. The somewhat negative approach taken by the Department of Agriculture is more than offset, however, by the statement that the principle of freedom enunciated in the standard is to apply not only to the presentation of a grievance, but to

employee-supervisor relationships after the problem has been adjudicated.

In order to appreciate the significance of this Department's policy, it is necessary to point out the constructive force inherent in an effective grievance procedure. This constructive role is clearly recognized by the Department of the Army, which states three reasons for believing its grievance procedure to be of positive value to management: (1) Its procedure will develop sound employee relationships by requiring line supervisors to make responsible decisions in personnel matters; (2) its procedure will disclose to management whether subordinate officials are showing a proper understanding and application of Departmental personnel policies; (3) its procedures serve as a basis for formulating objective replies to parties outside the Department making inquiry on behalf of aggrieved employees, such as congressional personnel.¹

In keeping with its belief in the positive values of an effective grievance procedure, the Department provides as follows with respect to the principle that an employee should be unimpeded and free from reprisal in presenting his grievance:

From management's point of view, the basic purpose in adjusting an employee's grievance is to retain, restore, or improve his status as a productive member of the work force.

¹ See also Civil Service Assembly, Employee Relations, 124-126, for three somewhat similar reasons for believing in the positive values of grievance procedures.

Moreover, the employee seldom becomes a fully productive worker unless the adjustment also contributes to his satisfaction.²

Consequently, the employee's commanding officer, in addition to having the responsibility of seeing that the employee is unimpeded and free in presenting a grievance, is given the further responsibility of seeing that positive steps are taken to achieve the purpose quoted above.

In view of the foregoing, it is recommended that agency grievance procedures contain a paragraph pointing out the positive values of the grievance procedure to both management and employee. This recommendation assists in achieving two basic objectives enunciated by the Sub-Committee on Grievances and Appeals of the Federal Personnel Council, which objectives seem to the Sub-Committee to be almost out of reach at the present time:

(1) demonstrating to employees and all others concerned that agency grievance procedures can assure the Government employee a fair deal without resort to congressional influence or appeal to authority outside his agency; and (2) demonstrating to top management and supervisors that an intelligently administered grievance procedure, far from 'tying the hands of management,' is of positive value in promoting good supervisory relations and helping to achieve the highest level of morale in the agency staff.³

2 Department of the Army, Civilian Personnel Regulations, No. E2, "Employee Relations-Grievance Procedures," 17; in speaking of the relationship of grievance handling to efficiency, the Chief of the Efficiency Ratings Section of the Civil Service Commission has said that "where a grievance is justified, timely remedial action is needed;" see John A. Overholt, "Grievance Procedures as Aids to Morale," Personnel Administration, Washington, D. C., Vol. 5, No. 9, May, 1943, 8-9.

3 Federal Personnel Council, Grievances and Appeals, 1-2.

The Ninth Standard of an Effective Grievance Procedure:

An employee should have the right to designate a representative or representatives of his own choosing to help him present his grievance.

All of the agencies under consideration adhere more or less closely to this standard permitting an employee to choose one or more persons to assist or to act for him in presenting his grievance. Some of the procedures, however, restrict the choice of the employee. The Department of the Navy, for example, stipulates that the choice, during the earlier stages of the procedure, is to be made from fellow workers; the Department of the Interior and the Panama Canal and Panama Railroad Company permit him to choose a fellow worker, a representative of an employee organization, or private counsel. The Department of State declares that an employee is expected to present his own case, but that he may have a representative if he likes. This Department, like the Department of Commerce, also provides that a representative is to be chosen by the employee's own organization unit to present its side of the case; both representatives, the employee's and the organization unit's, are to be given an opportunity to examine and to reply to evidence.

With few exceptions agency grievance procedures are vague in regard to setting down the number and kind of representatives whose assistance an employee may elect to utilize. Questions which are likely to arise because of this lack of detail

cannot but aggravate a case. This undesirable situation could be avoided if each agency would augment its procedures with auxiliary provisions as mentioned under the seventh standard.

With respect to the two agencies specifying that private counsel may be chosen, the Department of the Interior and the Panama Canal and Panama Railroad Company, it is regrettable that this privilege need exist. One of the general complaints frequently leveled at agency grievance procedures holds that they are "technical" and "legalistic."⁴ An agency should strive to adjust its internal personnel problems through internal channels; employees should be made to feel that these channels facilitate equitable adjustment and that recourse to external assistance in the form of private counsel is unnecessary.

With respect to this standard of employee representation, there is some variation in agency procedures as to the exact stage of procedure in which representation is permissible. Here again it would seem desirable to allow the agency to determine the question in the light of its individual circumstances. Determination, however, should be made with two considerations in mind: (1) neither the letter nor the spirit of the standard should be violated, and (2) representation in the early stages of employee-supervisor discussion would have a tendency to formalize

4 Ibid., 4.

the procedure, making the much-desired informal adjustment more difficult.

The Tenth Standard:

The agency must recognize the right of the employee to join, or to refrain from joining, an employee association without interference, reprisal, or coercion--with the following exceptions: (1) the employee may not be a member of an organization which imposes an obligation on him to strike against the United States;⁵ nor (2) may he be a member of any organization which advocates the overthrow of our constitutional form of government.⁶

This standard reflects the efforts of Federal employee associations to achieve a recognition denied them in the past when public administrators were more inclined to regard them with suspicion or hostility.⁷

Analysis of the grievance procedures under study is best

5 The Taft-Hartley Act of 1947 (61 Stat. Ch. 120, Title III, Sec. 305; P. L. 201, 80th Cong., 1st Sess., 1947) makes it unlawful "for any individual employed by the United States or any agency thereof...to participate in any strike."

6 Section 9A of the Hatch Act of 1939 (53 Stat. Ch. 410, 1148) makes such membership unlawful.

7 See Mosher and Kingsley, Public Personnel Administration, 515. With respect to the general question of "recognition," Repr. Withrow of Wisconsin has introduced a bill (HR 571) to give "official recognition" to Federal employee associations, stating that as matters now stand, such groups have no official entree to Government departments for the presentation of grievances in behalf of their members; see U. S. Congress, Congressional Record, 82nd Cong., 1st Sess., Vol. 97, No. 150, August, 1951, A5385.

accomplished by reducing the terms of the standard to its four logical questions. Such reduction is made necessary by the fact that the grievance procedures do not lend themselves at all readily to analysis with respect to the standard as a whole.

What do the procedures say with respect to recognizing the right of the employee to join, or to refrain from joining, a lawful association? The Departments of the Interior and the Air Force expressly recognize the right to join or not to join, whereas the Department of the Army merely states the employee has a right to join such associations. The Department of the Navy, the Economic Cooperation Administration, and the Departments of Commerce, State, and Agriculture are silent on the question.

What do the procedures say with respect to recognizing a right to join an association which imposes an obligation to strike? The Department of the Army simply states that an employee has a right to join an association whose activities are "within the limits imposed by the circumstances of government employment." The Department of the Air Force has a similar provision stating that the subject-matter of group presentations must be "within the area of administrative discretion permitted by Federal law, regulations and executive orders." The Department of the Interior is more explicit and expressly forbids employees being members of associations imposing an obligation to strike. The remaining agencies are silent on this question.

What do the procedures say with respect to recognizing

a right to join an association advocating the overthrow of our constitutional form of government? The Departments of the Army and Air Force provisions, as noted under the preceding question, would prohibit such association. The Departments of Commerce and State, and the Economic Cooperation Administration touch on this question only indirectly by way of their loyalty and security provisions. The remaining agencies do not specifically refer to the question.

The fact that not all agencies make explicit answer to the preceding questions concerning employee association is quite understandable, however, in the light of existing legislation. The Lloyd-La Follette Act has led to recognition of the right of association on the part of Federal employees, and the Taft-Hartley and Hatch Acts forbid the two types of association referred to in the standard. Consequently, agencies vary in their provisions concerning rights of association; some prefer to spell out what is permissible, while others do not believe this to be any more necessary than that they should enumerate, for example, all of the laws affecting employees as private citizens.

The fourth question relating to this standard of association that comes to mind is this: What do the procedures say with respect to agency-employee association relationships in general? The procedures, except as has been noted in answering the three previous questions, throw little light on this subject. The Department of the Interior, the Economic Cooperation Adminis-

tration, and the Departments of State and Agriculture are silent. The Department of Commerce and the Department of the Navy merely state that group proposals are considered as falling outside the provisions of their grievance procedures. The Departments of the Army and Air Force, on the other hand, each contain a section stating that group proposals having installation-wide significance are to be taken up directly with the commanding officer of the installation; further provision is made with respect to such matters as the distribution of literature by association members, the use of bulletin boards, the holding of meetings, and similar matters. These provisions are based on recommendations contained in a suggested guide for effective relationships with organized employee groups prepared by the Federal Personnel Council.⁸ The Panama Canal and Panama Railroad Company goes a step further and quotes these recommendations in their entirety, without, however, indicating whether it intends to be guided by them, either in whole or in part.

Since, for purposes of clarity and consistency, all personnel policies should be in writing and available to employees, and because policies concerning relationships with employee associations are a part of an agency's personnel policies, each agency should make known its policies with respect to employee associations. For an agency to fail to do so is to invite suspicion on

⁸ Federal Personnel Council, Suggested Guide, pamphlet of August 23, 1951, 1626 K Street, N. W., Washington, 25, D. C.

the part of employee groups that the agency is reluctant to commit itself to principles, and prefers to deal with them on a purely arbitrary basis.

The Eleventh, and Last, Standard:

Provision should be made for the publication, and distribution to all employees, of the agency's grievance procedure so that all employees will be fully informed of their rights as to the presentation of their grievances, and the procedure through which these rights may be exercised.

Six of the agencies make no reference in their procedures as to the publication and distribution of the material therein. The Department of the Army states that all installations are to take appropriate steps to assure the procedures being brought to the attention of all employees, and the Department of Agriculture states that arrangements should be made for each new employee to be given a copy of the procedures. The provisions respecting the circulation of the procedures in these two agencies, however, are not nearly as effective as those of the Department of the Interior. This latter agency states in the transmittal sheet accompanying the employee-management guide, of which the procedures are a part, that the guide is to be included in employee handbooks, house organs, and bureau releases; moreover that supervisors are to be instructed to study the guide.

It may be concluded from the foregoing that most of the agencies adhere only loosely to this standard, with the result

that both employees and supervisors in many instances will be unaware of the existence and nature of agency grievance procedures. This conclusion is reinforced by the Sub-Committee on Grievances and Appeals, for it reports that numbers of employees in various agencies, especially in the field service with which this study is concerned, are unaware of their rights under agency grievance procedures.⁹

It is recommended, therefore, that agencies follow the example of the Department of the Interior. This agency makes its grievance procedures a part of an employee-management guide of an educational nature, and states how the information therein is to be publicized. In addition it might have fixed the responsibility for such publicity upon particular persons or offices.

An examination of the preceding four standards and relevant agency provisions indicates that agency grievance procedures, with few exceptions, are weak with respect to pointing out the positive values of the procedures; they should be strengthened accordingly.

The satisfactory adjustment of grievances is made more difficult in the absence of auxiliary provisions, as referred to in Chapter II, concerning such important matters as the number and kind of representatives an employee may choose to assist him.

Internal channels for the adjustment of grievances should be made so effective that aggrieved employees will prefer

9 Federal Personnel Council, Grievances and Appeals,

them to such external channels as are afforded by lawyers, congressman and other officials, and groups outside the agency.

The exact point at which an aggrieved employee is permitted to choose a representative to assist him is best determined by the individual agency.

Agency grievance procedures, with few exceptions, are silent with respect to the policy the agency will follow in dealing with employee associations. Since agencies do not hesitate to state their personnel policies touching upon employees individually, their silence in reference to policies touching upon them collectively can be construed as a reluctance to commit themselves. This reluctance does not encourage the confidence of employee associations, whose lobby is a powerful one,¹⁰ and who may be expected to continue their efforts to have appeals handled outside the agency.¹¹ As was stated earlier, internal channels for grievance handling must be improved; employees individually and collectively must be convinced they can get justice within the agency and without resort to congressional influence or other

¹⁰ White, Introduction, 456. The methods of public employee associations are similar to those of other groups seeking to influence legislation, viz., lobbying, publicity, and political action; see Friedrich, Problems of the American Public Service, 233.

¹¹ White, Introduction, 427-428, reports that "arguments against an independent tribunal have so far prevailed. Opponents of the proposal assert that it over-emphasizes the rights of the employee and fails to give sufficient recognition to the interest of the responsible official." See also Civil Service Assembly, Employee Relations, 27.

authority outside the agency. It is recommended, therefore, that agencies publish the policies they expect to follow in dealing with employee associations, using as a guide the "Suggested Guide" of the Federal Personnel Council.

Many employees and supervisors cannot help but be unaware of their rights and duties in connection with their agency's grievance procedure. It is recommended that agencies make known to all concerned the existence and nature of their grievance procedures. Ideally, this would be done through the publication and distribution of an employee-management handbook of an educational nature.

CHAPTER V

CONCLUSIONS

With respect to the conclusions that can be drawn from the foregoing analysis of agency grievance procedures affecting Federal employees overseas, two broad categories can be made: those conclusions based on the letter of the standards given by the Civil Service Commission, and those based on their spirit. The analysis discloses an adherence, of varying strength, to the letter of the standards on the part of all the agencies studied. A different situation prevails, however, with respect to the spirit of the standards. While it is quite natural to find variations in procedures due to differences in agency objectives and working conditions, the analysis discloses variations that can be attributed only to non-adherence to the spirit of the standards.

It would be futile to attempt to draw conclusions and recommendations concerning the grievance procedures solely on the letter of the eleven standards, for these standards have been removed from their historical and social context in a much broader field, the field of employee relations. Consequently, the con-

clusions and recommendations that follow, while based upon the grievance procedures of the agencies included in this study, are made with the field of employee relations in mind as well. The spirit of the standards, more subtle than their letter, upon which these conclusions and recommendations are based, can be discovered only by such a broad approach.

The spirit of the standards, which should be reflected in agency grievance procedures, is lacking with respect to the matter of employee participation. The grievance procedures indicate a reluctance to secure employee participation in developing and formulating the procedures themselves. Because employees and supervisors have a knowledge of working conditions and relationships which is not accessible to top management, they should be encouraged to participate in the improvement of the procedures. In the relatively small organizations, such as are apt to be found overseas, employee participation in the development and improvement of grievance procedures can be obtained through the "suggestion box" method. Top management, being in the best position to supply the encouragement mentioned, should initiate improvements in written procedures with this end in mind. As has been previously pointed out, regulations arising, at least in part, from within an organization are more likely to be accepted cooperatively than those imposed upon the group from above. Employee participation should also be effected in the establishment of grievance hearing committees. The members of these hearing committees should be

selected from panels established through employee-employer co-operation. The panel method enables both employees and employers to appoint to the panel persons from within the agency who are familiar with the organization and problems of the agency. In this way a specialized grievance hearing committee of well-qualified as well as impartial members may be established, a committee in which both management and employees can have confidence.

Hearings, the keystone of grievance procedures, are not well provided for in the majority of agency procedures. They are the weakest step in the relatively simple and adequate staircase whereby an aggrieved employee is able to present his grievance to his immediate supervisor and carry it up the line of authority to the agency head. Agency procedures in general do not mention in sufficient detail the rights and duties of principals nor the provisions governing such important matters as the summoning of witnesses and the relevancy of testimony and evidence. Consequently, it is recommended that agencies supplement their grievance procedures with an appropriate handbook for the guidance of grievance-hearing committees. If an adequate hearing is conducted at the logical place, near the locality in which the grievance originates, or in which the principals reside, there is little point in holding additional hearings within the agency at higher levels. An appeal from the decision rendered as a consequence of this hearing can be directed to successively higher levels of authority, on the basis of the record, to the agency head. The

submission of evidence alleged by the appellant to be new and relevant, should be grounds for a re-hearing, however, as is presently provided for in most procedures. The decision as to whether the alleged new and relevant evidence affords sufficient grounds for a re-hearing, however, should be made by an authority higher than that of the original hearing level.

Auxiliary provisions concerning the administrative arrangements to be made in connection with grievance handling are, in general, either lacking altogether or are not given in enough detail to facilitate grievance adjustment. A grievance that was of a simple nature when first presented to the grievance procedure, and which was of concern to only one employee, can conceivably become considerably aggravated and the concern of an entire staff through controversy caused by the lack of auxiliary provisions. These provisions should specify the number and kind of representatives an aggrieved employee may choose to assist him, when and where hearings may be held, the circumstances under which official time is granted for the preparation and presentation of grievances, the circumstances under which travel funds may be furnished, and similar measures designed to forestall controversy at each stage of the grievance procedure.

All of the grievance procedures affecting Federal employees overseas stress the importance of adjusting grievances informally, and all point out the responsibilities of immediate supervisors in effecting this adjustment. Few of the procedures,

however, give any hint as to how these responsibilities are to be discharged. While such advice respecting the techniques of grievance handling is too lengthy to be incorporated in a grievance procedure, reference should be made therein as to where this advice can be obtained. To meet this need, agencies which have not already done so should publish supervisor's handbooks explaining agency policies with respect to the maintenance and promotion of good employee relations and the techniques of grievance handling. Ideally, courses in supervisory training in employee relations should be part of an agency's program to promote staff morale and efficiency. In short, more emphasis should be placed on the preventive aspects of grievance handling, and less reliance put upon the functioning of formal grievance machinery. This is especially true in the case of the Federal employee overseas, who is stationed at a great distance from the "home office", and whose living and working conditions differ from those of the employee in the United States.

Perhaps the most confusing aspect of grievance procedures, to both "foreign" and "domestic" Federal employees, is the multiplicity of grievance-handling channels that exists among the agencies. The number of types of grievances that are excluded from regular agency procedures varies from agency to agency. With the exception of loyalty cases, all types of grievances can be integrated into a unified system of grievance handling. This could be accomplished within the framework of existing laws and

regulations by the Civil Service Commission. Agency officials themselves, however, should take the initiative in establishing a unified system of grievance handling. Simply to exclude certain types of grievances from their grievance procedures on the grounds that other channels are available outside the agency is a shirking of responsibility on the part of agency officials. The existence of such an attitude is difficult to understand on the part of officials who have long maintained that an employee's fitness is a matter of judgment to be determined by an agency head, and that the power to hire should carry with it the power to fire.¹ As has been previously indicated, the internal channels for agency grievance handling must be improved. Employees, both individually and collectively, must be shown they can get justice within the agency. Unless they are, they may be expected to continue their effort to establish tribunals independent of the agency, an effort which, if successful, could conceivably limit the freedom necessary to an agency head to operate effectively. It is recommended, therefore, that agency officials take the initiative in integrating their grievance procedures as part of their program to improve the internal channels for handling grievances.

Other efforts toward improvement that should be made,

¹ These two principles were formally enunciated by the courts in Taylor v. Taft, Secretary of War, 24 App., D. C. 95, in 1904, and in Myers v. U. S., 272 U. S. 52, in 1926, respectively; see Mosher and Kingsley, Public Personnel Administration, footnote, 344.

and that have already been mentioned, include the following: The positive values of agency grievance procedures in promoting staff efficiency and morale should be pointed out to supervisors and top management. As to the rank and file of employees, more serious efforts must be made to insure that they are made aware of the existence and nature of agency grievance procedures; this is a necessary preliminary step in the process of demonstrating to them that they can find fair treatment within the agency and without recourse to authorities outside the agency.

Where field installations are allowed to deviate from an agency's grievance procedures, such as may be expected to occur in overseas situations, prior approval of such deviation should be made mandatory in the interests of consistency and equity.

Removal actions should be prepared in such a way as to withstand the pressure of an agency's grievance procedure. If this is done properly, no harm need come to either the grievance machinery or the agency. Employee morale and efficiency would be promoted by the knowledge that an employee cannot be summarily removed from his position, far from home, without being given recourse to a grievance procedure, including a fair hearing. In serious matters warranting immediate action, the employee can be suspended, an investigation made, the employee notified of the removal action contemplated and of his right to the grievance procedure, and the removal action initiated if the investigation

so warrants. .

Agency grievance procedures, with few exceptions, are almost completely silent with respect to the policy the agency intends to follow in dealing with employee associations. In keeping with the objective of improving the internal channels for grievance handling, it is recommended that agencies publish the policies they intend to follow, using as a guide therefor the recommendations of the Federal Personnel Council.

The foregoing conclusions and recommendations have been derived more or less necessarily from the provisions of the procedures themselves. There is, however, another class of conclusions and recommendations that can be derived from this study as a whole. They do not have their support in the written provisions themselves, but rather in inferences from the study as a whole. This second class of conclusions and recommendations is given as follows:

As was stated on page 4 herein, grievance procedures represent a compromise between two conflicting desires: the desire to give the administrative official enough latitude to enable him to build a good working force, and the desire to protect the employee against unwarranted injury and to encourage his belief that his agency is a good place to work. Criticisms of procedures, for the most part, are made in terms of these two desires. Some hold that administrative officials are unduly restricted, while others maintain the employees are unduly re-

stricted, with a consequent loss of morale on both sides. Both criticisms can find support in the grievance procedures studied herein, depending upon which provision of which procedure is selected as evidence. However, with the exception of certain provisions, as have been noted herein, it would appear that, in general, the grievance procedures are reasonably equitable and workable when measured against the standards of the Civil Service Commission. This is not, however, to minimize the need for improvements designed to make them more equitable and workable.

With the exception of the Department of State and the Economic Cooperation Administration, the agencies have written their procedures with the "domestic" employee in mind. This is apparent from the absence of provisions relating to overseas employees specifically, their living and working conditions, and the organizational structure in which they perform their duties. Overseas officials should be given responsibility and commensurate authority for adjusting grievances overseas at or near the locality in which they originate. Appeal should be provided for, on the basis of the record, to the agency head in the United States. The provisions for such appeal, however, should permit the employee to present all evidence the employee thinks is relevant, rather than that deemed relevant by the overseas official.

It is also apparent that the problem of grievances overseas should be related in the thinking of personnel officials to the problem of recruitment for overseas duty. The personnel of-

officials in each agency having employees overseas should provide for close coordination between offices in the United States handling recruitment and offices overseas handling grievances; this coordination should be aimed at reducing the number of grievances arising overseas by proper recruiting in the United States.

The chief value of grievance procedures would seem to be that they give the employee confidence in his agency; this is an important morale-building factor. The confidence is inspired by the fact that the employee's supervisors may be deterred by the existence of grievance procedures from subjecting him to adverse personnel actions for purely arbitrary reasons. In this respect supervisors and employees alike should be made aware that Public Law 623 of the 80th Congress provides for paying compensation to employees whose suspension or separation is found to have been unjustified.

Grievance procedures should provide that in cases where an appeal is not upheld, the facts, circumstances, and regulations which led to the decision are to be made known to the appellant. This is a provision contained in the procedure of the Department of the Navy and should be found in all other agency grievance procedures if the problem of appeals is to be minimized.

The status of employee relations and grievance procedures is determined primarily by the desires of the Chief Executive and Congress, as is apparent from the history of executive and legislative actions affecting the public service. These public

officials are moved by their understanding of what the public desires in the way of employee relations and grievance procedures. Consequently, any long-term plan, such as the Whitley Council system used in England, designed to improve grievance procedures should be aimed at informing the public as to what is desirable.

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